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**SEP 01 2004**

**OFFICE OF PETITIONS**

In re Application of :  
Simona Pilone :  
Application No. 10/717,828 : ON PETITION  
Filed: July 12, 2004 :  
Attorney Docket No. 09728.0300US01 :

This is a decision on papers styled "Petition Under 1.17(h)" filed on July 12, 2004, which is being treated as a petition under 37 CFR 1.53, requesting that the above-identified application be accorded a filing date of November 20, 2003, including the specification, claims and drawings.

The application was filed on November 20, 2003. However, on June 24, 2004, the Office of Initial Patent Examination (OIPE) mailed a "Notice Of Incomplete Nonprovisional Application" (Notice) that stated the application had not been accorded a filing date, and the specification, claims and drawings were missing.

In response, on July 12, 2004, the instant petition and eight (8) pages of specification, ten (10) claims, an abstract and two (2) sheets of formal drawings were submitted. The petition states, "Please note Exhibit A, which shows a copy of the postcard returned by the USPTO listing the application serial number and filing date. Note that nothing has been crossed off of the postcard. Under MPEP Chapter 500, Section 503, this serves as proof that all items were received by the USPTO receiving office. Applicant is therefore entitled to the original filing date of November 20, 2003." However, the aforementioned copy of the postcard receipt (Exhibit A) cannot be located in the application file after a thorough review.

As such, petitioner's argument is not persuasive. The Patent and Trademark Office (Office) file is the official record of the papers originally filed in this application. A review of the official file reveals that the specification, claims and drawings were not filed on November 20, 2003, since no such papers are present in the file. An applicant alleging that a paper was filed

in the Office and later misplaced has the burden of proving the allegation by a preponderance of the evidence. Petitioner has not submitted any evidence to support petitioner's allegation.

The Office has a well established and well publicized practice of providing a receipt for papers filed in the Office to any applicant desiring a receipt. The practice requires that any paper for which a receipt is desired be filed in the Office with a self-addressed postcard identifying the paper. A postcard receipt which itemizes and properly identifies the papers which are being filed serves as prima facie evidence of receipt in the Office of all the items listed thereon on the date stamped thereon by the Office. See MPEP 503.

A copy of a postcard receipt that would indicate receipt of the specification, claims and drawings has not been submitted. If petitioner has a postcard receipt date stamped by the Office that indicates receipt of the specification, claims and drawings on November 20, 2003, then the postcard receipt or a copy thereof should be supplied.

At the present time, the petition must be dismissed. However, this decision is made without prejudice to reconsideration. If petitioner has a postcard receipt date stamped by the Office that indicates receipt of the specification, claims and drawings on November 20, 2003, then the postcard receipt or a copy thereof should be supplied, accompanied by a letter requesting reconsideration of this decision. No additional petition fee is required for such a request.

Any request for reconsideration should be filed within **TWO MONTHS** of the date of this decision in order to be considered timely. This time period may not be extended pursuant to 37 CFR 1.136.

Further correspondence with respect to this matter should be addressed as follows:

By mail:           Mail Stop Petition  
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By hand: Customer Service Window  
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Telephone inquiries should be directed to the undersigned at  
(703) 306-9200.

A handwritten signature in dark ink, appearing to read 'E. J. Tannouse', followed by a long horizontal line extending to the right.

Edward J. Tannouse  
Petitions Attorney  
Office of Petitions  
United States Patent and Trademark Office